91-559

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

LEWIS G. ROBINSON, PETITIONER

v.

CLEVELAND STATE UNIVERSITY, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

LEWIS G. ROBINSON, PRO SE PETITIONER
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QUESTIONS PRESENTED FOR REVIEW

1. Did the Sixth Circuit Court of Appeals erroneously apply the clear and convincing evidence standard to the Plaintiff as used in the libel action in Jack Anderson, Et Al., v. Liberty Lobby, Inc., 477 U.S. 242 upon which it based its Decision in affirming the F.R.C.P. Rule 56 Summary Judgement Ruling of the District Court as expressed by Justice Rehnquist and Chief Justice Burger, and Justice Brennan in their Dissent.

2. Did the Trial Judge over step his function in erroneously granting Summary Judgement when he, with Appellate Court approval, disregarded the Petitioner's Affidavit containing facts which showed that two members of the Hiring Committee for Cleveland State University knew Petitioner socially and professionally for over 18 years and thus knew that he was Black which will determine the outcome of the Case involving racial discrimination and is the only genuine issue involved in this Case that the Jury must decide.

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NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

LEWIS G. ROBINSON,

Petitioner,

vs.

CLEVELAND STATE UNIVERSITY,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, Lewis G. Robinson, respectfully prays that a Writ of Certiorari Issue to review the Judgement and Opinion of the Sixth Circuit Court of Appeals issued May 2nd, 1991 because no other remedy exist at Law or Equity to prevent irreparable injury and the permanant denial of Due Process and Equal Protection cast upon him by the Appellate Court's Decision.

That the Court of Appeals erroneously affirmed the District Court's granting Summary Judgement based upon the libel case of Jack Anderson Et Al., v. Liberty Lobby, Inc., 477 U.S. 242 (1986), wherein it was confusingly decided that clear and convincing evidence must be submitted in order for the Non-Movant to prevent the granting of Summary Judgement.

JURISDICTION

Jurisdiction of this Court is sought under Supreme Court Rule 17.1 (A) (B) (C).

This Pro Se Appellant, Lewis G. Robinson, brought this Action originally pursuant to 42 U.S.C. Sec. 2000E, ETSEQ., Title V11 OF THE Civil Rights Act of 1964 and 29 U.S C. Sec. 621 Et Seq., the Age Discrimination Act of 1967.

The Petitioner/Plaintiff, is seeking an Order from this Court to remand this Case to the District Court for Trial.

The Summary Judgement was based upon the genuine critical issue of fact as to whether the Defendant, Cleveland State University knew the Plaintiff was Black.

The Trial Court based its Decision upon an Affidavit by an Administrator (Garrison) who was far removed from the Selection Committee and had no personal knowledge nor did he state under Oath that anyone or all of the five (5) members of the Committee deny knowing Plaintiff was Black. It merely states that no designation of race or age were requested or submitted on the application.

Plaintiff's Affidavit states that he knew and had socially associated with the only Black member and her husband for over 25 years and had known and worked professionally with the Chairman of the Committee for at least 18 years. The Chairman of the Committee Norman Krumholz, was selecting a replacement for his position, that of Director of The Center For Neighborhood Development, and undoubtly exercised a substantial influence over the decision to select the 40 year old white male chosen for the job.

The person chosen and several resumes, list the birth dates and the age of all others can be substantially determined by dates of education and graduations.

The Court should have taken special notice of the fact that the Defendant did not submit an Affidavit from not one of the five (5) member Selection Committee rebuting or denying Plaintiff's Affidavit that he knew two of them.

The fact that Plaintiff's Affidavit states he knew two of the Committee Members and stated facts to support his allegations of facts were sufficient genuine facts in dispute to submit to a Jury. Those facts were sufficient to determine the out come of the Case and the District Court categorically ignored these critical facts and erroneously declared as a matter of Law that these facts had no probative value worth a Jury's consideration.

The Court's decision was arbitrary, capricious, and prejudicial to the Plaintiff and resulted in a gross Denial of Due Process and Equal Protection.

The Court should, just as any Lay person Juror would be more than curious, wonder why and how a person with a Law Degree and many years of experience in the Fields required for the position open, could

apply for six positions in the Urban Studies Department of Cleveland State University over a two-year period and not be interviewed for not one job to which he submitted his application and Resume, particurlarly when he visited in person, and inquired of the first position, and he overheard the Secretary state: "You are saying Mr. Robinson was over qualified?" That position was re-opened to seek more applicants.

The Defendant make light of the fact that complaints of age and race discrimination were only filed by Plaintiff in the positions of Director of Neighborhood Developer and Neighborhood Planner. The reason for that is that an applicant will be denied a job because you will be called a chronic complainer, retalitation will be visited upon you. Some employerers ask well educated Blacks if you have ever filed a Discrimination Complaint or do you feel you have ever been discriminated against in order to gauge your independence of thinking or aggressiveness. Of course, if you say "no" and a check is made, you are fired for lying or you will be classified as a potential trouble

maker.

These are the realities in America for African-Americans.

(1) Summary Judgment and Judgment on the § 5 - genuine issue of material fact -

Under Rule 56(c) of the Federal Rules of Civil Procedure, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgement; the requirement is that there be no "genuine" issue of "material" fact.

(2) Summary Judgment and Judgment on the Pleadings § 5 - determination - judge's function -

Under Rule 56 (C) of the Federal Rules of Civil Procedure, the judge's function at the summary judgment stage is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.

Summary Judgment and Judgment on the pleadings § 5 - findings of fact -

There is no requirement that the trial judge make findings of fact in ruling on a motion for summary judgment under Rule 56 (c) of the Federal Rules of Civil Procedure.

(3) Summary Judgment and Judgment on the Pleadings §5;Trial §§ 46, 48, 79, 194-summary judgment and directed verdict -

jury determinations

Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether the judge is ruling on a motion for summary judgment or on a motion for directed verdict.

Summary Judgment and Judgement on the Pleadings § 5 - inferences.

On a motion for summary judgment, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in the nonmovant's favor.

Summary Judgment and Judgment on the Pleadings § 5 - judicial caution.

Trial courts should act with caution in granting summary judgment, and may deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.

The facts presented above and the Rules of Procedure and Responsibility of the District Court clearly shows that the Trial Court was in error in granting Summary Judgement, and the Appellate Court compounded this error as shown in the final paragraph of Anderson v. Liberty Lobby, Supra,:

"in sum, a Court ruling on a Motion For Summary Judgement must be guided

> by the New York Times "clear and convincing" evidentary in determining whether a genuine issue of actual malice exists - that is whether the evidence presented is such that a reasonable Jury might find that actual malice had been shown with convincing clarity. Because the Court of Appeals did not apply the correct standard in reviewing the District Courts Grant of Summary Judgement, we vacate the Case for further proceedings consistent with this Opinion."

It is clear to this Petitioner and to this Court that in reading the above paragraph in preparation of the Sixth Circuit's Decision in this Case, the Clerk clearly and unconsciously failed to detect the word malice and that the Anderson Case and New York Times Cases involved libel with malice a fore thought whereas this Case involves Race and Age Discrimination which one has to prove only the existence of a genuine issue in dispute wherein reasonable people may differ and by Law and Procedure, we let a Jury decide the issue, - which in this Case is, did the two members of the Hiring Committee of Cleveland State University know the Plaintiff, Robinson, was Black. If yes, he wins his Case. If not, he lose.

That is the proposit in that the Trial Court should have submitted to a Jury by denying the Motion For Summary Judgement.

> Adickes v. S.H. Kress and Co., 398 U.S. at 157. The moving Defendant had failed to rebut the Plaintiff's Prima Facie Case. The essence of the confession which easily arose and caused the erroneous Decision of the Appellate Court and District Court in this Case is succinctly analyzed in the dissenting Opinion by Justice Brennan in Anderson v. Liberty Lobby upon which Petitioner's Case was decided by both the District Court and Appellate citing the Anderson Case in their Decision.

CONCLUSION

The Petitioner humbly request this Court to issue a Clear Mandate that the Anderson Case Ruling is strictly to be used in libel Cases and that this Case be remanded to the District Court for Trial.

HUMBLY SUBMITTED,

Lewis G. Robinson

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3646 Hildana Road
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1-216-921-4107

CERTIFICATE OF SERVICE

A copy of this Motion has been served upon Defendant via U.S. Certified Mail this 7/27/91 day of July, 1991 to Atty. Daniel J. O'Loughlin, 1800 Huntington Bldg., Cleveland, Ohio 44115.

Lewis G. Robinson

Lewis G. Robinson, Pro Se

APPENDIX A.

NO. 90-3940

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5/30/91
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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed: 5/02/91
Leonard Green, Clerk

LEWIS G. ROBINSON,

Plaintiff-Appellant

v.

CLEVELAND STATE UNIVERSITY; BOARD OF TRUSTEES OF CLEVELAND STATE UNIVERSITY,

Defendants-Appellees

O R D E R 89 CV 258

BEFORE: KRUPANSKY and BOGGS, Circuit Judges, and DUGGAN, District Judge*

This pro se appellant, Lewis G. Robinson, appeals from the district court's order granting summary judgment in favor of the defendants, Cleveland State University and its Board of Trustees, in this suit pursuant to 42 U.S.C. § 2000e, et seq., Title V11 of the Civil Rights Act of 1964, and 29 U.S.C. § 621, et seq. the Age Discrimination in Employment Act of 1967.

This case has been referred to a panel of the court

pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs and the record, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Robinson, a Black male over 50 years of age, alleged that he was denied employment with the Urban Center at the University's College of Urban Affairs on the basis of his race and age. Robinson alleged that between 1987 and 1989, he applied for six positions of employment with the Urban Center. The University only has a record of five applications. Robinson only filed charges of alleged employment discrimination against the University with the Equal Employment Opportunity Commission (EEOC) with respect to two of the positions he applied for: Director of the Center for Neighborhood Development and Neighborhood Planner. The EEOC issued Robinson a right-to-sue letter with respect to those two positions.

In his suit against the Defendants, Robinson alleged that he was fully qualified for these positions and was denied them because of his race and age. He

sought monetary damages and further requested a mandatory order requiring the University to employ him in the first available position for which he is minimally qualified.

The defendants filed a motion for summary judgment, with supporting attachments, alleging that there was no evidence that defendant's decisions were taken for discriminatory purposes. After reviewing the defendants' motion and Robinson's response, the district court granted the motion. Robinson's subsequent motion for reconsideration was denied in a marginal order entered October 2, 1990. Robinson disagrees with the district court's decision and brings this timely appeal.

Upon consideration, we conclude that summary judgment on Robinson's claims was proper, as Robinson did not establish the existence of any genuine issue of material fact. (See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). Moreover, the additional claim of retaliation presented on appeal will not be addressed as it was not first presented in the district

court for consideration. (See White v. Anchor Motor Freight, Inc., 899 F.2d 555, 559 (6th Cir. 1990)

Accordingly, the order of the district court is affirmed under Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green, Clerk

A True Copy

Attest:

Leonard Green, Clerk

By /s/ Teresa Beitke
Deputy Clerk

Issued As Mandate: May 24, 1991

COSTS; None

* The Honorable Patrick J. Duggan, U.S. District Judge for the Eastern District of Michigan, sitting by designation.